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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

GILBERTA ALVARADO TIZOC,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71612

Agency No. A75-681-468

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Gilberta Alvarado Tizoc, a native and citizen of Mexico, petitions pro se for
review of the Board of Immigration Appeals' ("BIA") decision summarily

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2).

affirming an immigration judge's ("IJ") order denying Tizoc's application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo the IJ's determination of purely legal questions. *Kankamalage v. INS*, 335 F.3d 858, 861 (9th Cir. 2003). We grant the petition for review and remand for further proceedings.

The IJ denied Tizoc's application for cancellation of removal solely on the basis that Tizoc's period of continuous physical presence was severed when she detained at the border and released after she left the United States for approximately 15 days to visit her father who was ill. Because Tizoc's brief detention and release at the border did not sever her period of continuous physical presence, *see Tapia v. Gonzales*, 430 F.3d 997, 1002-03 (9th Cir. 2005), we grant the petition for review and remand to the BIA to remand to the IJ for further proceedings. On remand the IJ shall consider the merits of Tizoc's cancellation of removal claim, including whether she has established the requisite period of continuous physical presence. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002).

PETITION FOR REVIEW GRANTED; REMANDED.